

COPYRIGHT AND OPEN ACCESS 2003: WHAT HAPPENED AND WHAT'S NEW

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ABSTRACT: Over the past year, several issues in U.S. and European copyright laws have developed which are of concern to IAMS LIC members. Most prominent were the Eldred v. Ashcroft decision and the shelving of UCITA. There were also several developments in "open access" initiatives to create resources where information would be available without copyright restrictions that may soon impact the way IAMS LIC libraries function. Finally, Digital Rights Management (DRM) is developing in ways that will impact libraries and information centers.

Good morning, I'd like to talk this morning about issues in copyright, or to be more precise, the subject of "open access" to scientific literature that occurred over the past year, as well as things that are occurring now. I will primarily cover US copyright issues, but if anyone here has important and relevant news concerning copyright and open access in other countries, please feel free to share it with us at the end of this presentation.

I'd like this to be a discussion, not a speech. I know you all follow these issues closely, so please feel free to jump in whenever you have a comment.

Providing user services is ordinarily, in the best of circumstances, a cut and dried process. There are, however, forces at work that will influence the way we provide information resources to our patrons. Potential shoals in the harbor, as it were.

Eldred v. Ashcroft

On Jan. 15, 2003 the U.S. Supreme Court upheld the 20-year Sonny Bono Copyright Term Extension Act. The Sonny Bono CTEA, as you might be aware, in 1998 extended the 1976 U.S. copyright act by 20 years retroactively, to make copyright protection good for 95 years in total. How will this decision manifest itself in the lives of information specialists like us? Could it help the vendors we rely on for access to digital materials retain much more control over how we use their offerings, how much we pay for them, for a longer period of time?

UCITA

UCITA, the Uniform Computer Information Transactions Act, which caused quite a stir when it was described by Stephanie Haas at the 2000 IAMS LIC Conference in Victoria, apparently is dead in the water after being instituted in only two states, Maryland and Virginia. UCITA is, or was, a law designed to give vast controls via "shrink-wrap licenses" that would allow software and online vendors to not fully disclose the terms of a license until after purchase (hence "shrink-wrap"—you find out what you get after you open it). UCITA was comprised of prohibitions for users that would inhibit and do away with what many of us think of as "fair use" for many types of materials. One example was the remote disabling of software if a user violated the licensing agreement.

The sponsor of UCITA, the National Conference of Commissioners on Uniform State Laws, withdrew UCITA this summer from the American Bar Association approval process after much protest from librarians and the public. The American Library Association has cautioned, however, that even without ABA support, UCITA type legislation could appear on the agendas of other state legislatures, as NCCUSL has stated that they might try to resurrect UCITA in another form.

Open access initiatives

There are a number of "open access" initiatives happening at present that you might want to be aware of. "Open access" if you're not familiar with the term, means materials, like scientific papers for example, that are freely available without copyright restrictions to the public. That is, while the works may be copyrighted, the owners, authors, or creators have agreed to not enforce copyright protection. This seems to be the new wave in scientific publishing. The Public Library of Science (PLOS), founded by a trio of biological all-stars (Harold Varmus, Patrick O. Brown, and Michael Eisen), was launched this year and will shortly begin its first phase, PLOS Biology. The PLOS Biology site has a preview section with among other items, one paper describing a new species of elephant. Let's hope PLOS Biology will have many contributions in the area of marine and aquatic sciences as well.

The Scholarly Publishing and Academic Resources Coalition (SPARC) has been operating for a couple of years now. SPARC is a coalition of organizations formed to offer an alternative to the traditional model of the dissemination of peer-reviewed scholarship. According to its website, SPARC "helps stimulate competition in the market by nurturing high-quality, low-cost journals published by researchers, societies or publishers with scientist -- and library-friendly values and practices."

In Europe, a conference on "Open Access to Knowledge in the Sciences and Humanities" will take place in Berlin on October 20th. This three-day conference will bring together librarians, researchers, publishers and other interested parties around Europe to plan the future for an open, flexible, scholarly publishing system. It looks like the open access wave is breaking all over these days.

Another online resource, the Directory of Open Access Journals (DOAJ), begun at Lund University in Sweden, provides a reasonably up-to-date list of open access journals currently available online.

Sabo Bill

There is a bill working its way through the US House of Representatives known as the "Public Access to Science Act" or the Sabo Bill, after its sponsor, Martin Sabo of Minnesota. In a nutshell, the bill would, if passed, do away with copyright protection for any scientific work produced with "substantial" funding by the US federal government. Quoting from the text of the bill which I looked up through "Thomas", it says: "A bill... To amend title 17, United States Code, to exclude from copyright protection works resulting from scientific research substantially funded by the Federal Government." It sounds like we have a potential for radical change in scientific publishing if this bill is passed.

One would expect a great deal of lobbying on this bill, from both scientific publishers and from the open access community.

DRM (anticircumvention)

Digital Rights Management or DRM are technologies in service now and being developed that administer and control digital content of every sort, from e-books to DVDs to music. Ostensibly done to prevent piracy, manufacturers and digital content providers embed access and copy protection software to control how someone uses the material they or their library/information center paid for. According to an article by Carrie Russell in the August 2003 issue of *Library Journal*, DRM does not "distinguish among uses ... fair use and piracy are viewed the same" (Carrie 2003).

Some of the controls of DRM have the potential to interfere with the copyright provision known as "first sale." "First sale" allows people and institutions who have legally acquired a copy of a work to, among other things, loan that copy without the copyright holder's consent. While the fundamental idea behind a traditional book-based lending library is now protected by the "first sale" provision, any changes in the "first sale" concept as applied to digital content could have a critical impact on lending practices.

While content providers and other information vendors do have a right to protect their product from theft and piracy, there are fears being expressed that DRM could advance to the point where the user's interests and needs will take a backseat to the interests of the provider. DRM is something that you may want to keep track of, because its repercussions could have a direct effect on your work, if it hasn't already.

Conclusion

Digital information is evolving at a rapid pace, as are the legal and financial issues that accompany it. It is essential for librarians and other information specialists like us to monitor developments in intellectual property laws and understand what their effects will be. Stay informed and stay involved.

Web sites of interest:

- Berlin conference on open access: <http://www.zim.mpg.de/openaccess-berlin/>
- Bethesda statement: <http://www.earlham.edu/~peters/fos/bethesda.htm>
- Center for the Public Domain: <http://www.centerforthepublicdomain.org/>
- Chilling Effects page: <http://www.chillingeffects.org/fairuse>
- Digital Consumer: <http://www.digitalconsumer.org/>
- Directory of Open Access journals: <http://www.doaj.org/>
- German anti-open access page: <http://www.52a.de/>
- National Research Council of Canada FAQ:
http://igci.gc.ca/NRC-CNR/faq_journals-e.html
- Open access newsblog: <http://www.earlham.edu/~peters/fos/fosblog.html>
- Public Library of Science (PLOS): <http://www.publiclibraryofscience.org/>
- SPARC: <http://www.arl.org/sparc/home/index.asp?page=0>
- SPARC Europe: <http://www.sparceurope.org>
- THOMAS (to follow the progress of bills in the U.S. Congress):
<http://thomas.loc.gov/>
- U.S. Copyright Office: <http://lcweb.loc.gov/copyright/>
- World Intellectual Property Organization (WIPO): <http://www.wipo.org/>

References

Russell, Carrie. 2003. Fair use under fire. *Library Journal* (August) 32-34.